shew such to be the case, and if it was not so there is a plain denial by many witnesses of the fact of his taking the oath. The ground stated by the Returning Officer would be sufficient to reject this vote, and if it were allowed it would not effect the result.

As to Thomas Riley, he refused to take the oath, as he admits himself, but says the Returning Officer refused to record his vote unless he was sworn, as he believes out of spite or some other improper motive, as he well knew his vote was good. If this had been stated as a specific charge against the Returning Officer, as shewing him to have been partial and a partizan of Defendant, and that he had of his own mere motion, without being required so to do by the Defendant, insisted on the voter taking the oath to annoy and vex him and perhaps prevent his voting for Relator, when he knew he had a good vote, I might have required an explicit answer from the Returning Officer on this point. But the charge has not been so made; and in reference to the voters unpolled who have good votes, the Returning Officer states that two refused to take the necessary oath as required by Hall, which may include this voter. Now if the candidate required the Returning Officer to administer the oath to a voter, and he refused to take it, the refusal to record such a vote could never be properly urged as indicating partiality on the part of the Returning Officer. If the charge had been in express terms that the Returning Officer, without being required so to do by either of the candidates, or their agents, and with a view of favoring the return of Defendant, and for purposes of annoyance, had required a person (naming him) whom he knew to be a qualified voter to take the qualification oath, then he ought to answer explicitly. It would be the duty of the officer to refuse to record the vote if a candidate insisted on the voter taking the oath, and he declined doing so, and he might then well insist, even if he knew he had a good vote, on his taking the oath, before he would record the vote.

The Relator fails to make out a case to warrant me in coming to the conclusion that the election should be set aside. He fails to shew that the result of which he complains was caused by the conduct of the officer, and therefore it is only of importance to consider the other grounds as to the Returning Officer, so far as the costs are concerned.

The general rule is to assume that the officer acts properly and honestly until the contrary is shewn, and when it is intended to charge the officer with unfairness and partiality the case should be plainly stated and clearly made out. In this case the charges made are general, are met as broadly as they are made, and as to the specific grounds, considering all the affidavits filed, I think the Relator fails to make out his case.

In conclusion, I may say I have arrived at the following results. 1. That Relator fails to shew that any named duly qualified voter was induced to refrain from voting for him by the conduct of the Returning Officer or the Constables. 2. That even if it be admitted that the votes of Long, Armstrong and Riley, should have been recorded for Relator, he would still be in a minority. The votes at the close being for Relator 33, and for Defendant 39; deducting one vote from the latter and adding three to the former, the result would be 38 for Defendant and 36 for Relator, leaving the Relator in a minority of two; and so his case fails.

As to the costs, I think I cannot under the circumstances vary the general rule that the unsuccessful party must pay the costs, and therefore decide as to costs against Relator; but must not refrain from drawing the attention of the taxing officer to the great number of affidavits filed on behalf of the Defendant and the Returning Officer, and the extraordinary manner in which they are framed, the larger part of them being filled with a statement of the time and place of holding the election, the names of the Candidates and the Returning Officer.

It will be well for the Master to consider, in taxing the costs, whether it was necessary to have so many affidavits and so diffuse, and whether a great many of the Deponents could not have joined in one affidavit, particularly those who swear generally as to the fairness of the conduct of the Returning Officer.

Judgment for defendant with costs.

STEPHEN CLOSSON v. JORDAN POST ALEXANDER THOMPSON AND THOMAS ADAMS.

Administration Bond—Costs of assignment.

The costs of an application under sec. 82 of the Surrogate Courts Act (Con. Stat. U. C. p. 112), for an assignment of a probate bond in order to an action thereon at Common Law, cannot be taxed as costs in the action but should be recovered as damages consequent on default.

(Chambers, May 15, 1860.)

It is provided by sec. 82 of the Surrogate Courts Act (Con. Stat. U. C., p. 112) that the Court of Chancery may order all bonds taken in the Court of Probate on the grant of administration, and inforce on 1st September, 1858, to be assigned and that the same may be enforced in the name of the assignee under the authority of the Court of Chancery, in the same way as provided for in the case of assignment of bonds in the Surrogate Court.

As to the latter, it is by sec. 65 of the same Act (p. 108) provided that the judge of every Surrogate Court on application made or on a petition in a summary way, and on being satisfied that the condition of any such bond has been broken, may order the Registrar of the Court to assign the same, to some person to be named in such order, and that such person, his executors or administrators, shall thereupon be entitled to sue on the said bond in his own name, both at Law and in Equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of the condition of the said bond.

Letters of administration were granted by the Court of Probate for Upper Canada as to the estate of Calvin Carnell, deceased, during the minority of his son, who was then a minor, to the defendant Jordan Post. The usual bond was given by defendant Post and the remaining defendants Thompson and Adams. It having afterwards been shewn by the plaintiff to the satisfaction of the Court of Chancery, that defendant Post had committed a breach of the condition of the bond, that Court ordered the bond to be assigned to the plaintiff.

Plaintiff then commenced an action upon the bond in the Court of Queen's Bench, and recovered a verdict for the penalty with damages assessed at £61.

At the taxation of costs, plaintiff included in his bill against the defendants, the costs of the application to the Court of Chancery for the assignment of the bond, and the master disallowed them.

R. A. Harrison, appealed against the master's decision.

W. H. Burns, contra.

DRAPER, C. J.—In my opinion, the costs of the application to the Court of Chancery, cannot be taxed as costs in this cause. I think they might have been recovered as damages consequent on the default of the defendant.

CHANCERY.

(Reported by THOMAS HODGINS, Esq., LL. B, Barrister-at-Law.)

JAMES CALDWELL v. HEZEKIAH J. HALL AND JOHN MAXWELL.

Mortgagor and Mortgagee—Dormant Equities Act 18 Vic., ch. 124.

Held, 1. That the Dormant Equities Act, 18 Vic., ch. 124, (Con. Stat. U. C., p. 58, ch. 12 secs. 59 & 60) does not apply to cases of an express trust. 2 That clearly it does not extend to cases of mortgage; these cases being amply provided for by the Chancery Act, (*Wragg v. Jarvis* in appeal, 7 Grant. 220,) commented upon.

(May 16, 1860.)

In 1855, Robert Caldwell, the father of the plaintiff, was the owner of Lot No. 104 in the town of Guelph, containing by admeasurement one quarter of an acre, with a house and other buildings thereon erected.

On 10th March, in the same year, he mortgaged the lot and premises to the defendant John Maxwell, as security for the payment of £45, and interest on or before 4th February, 1837.

Robert Caldwell continued in possession up to the time of his death, which happened during the month of May, 1838. He died intestate, leaving a widow and the plaintiff, his only son and heir at law, his survivors.

The plaintiff, at the time of his father's death, was an infant under the age of 2 years.

The defendant John Maxwell, having in 1839, about a year after the death of plaintiff's father, threatened proceedings at law